

(2000) 05 KL CK 0008
In the High Court Of Kerala
Case No : C.R.P. No. 2629 of 1999

Guardian Angel Eng.Medium H.S.

APPELLANT

Vs

St. George Yacobaya Syrian Church

RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Citation : (2000) 1 KLJ 975 : (2000) 4 RCR(Civil) 65

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : M.R. Parameswaran and M.P. Ramnath, for the Appellant; K. Ramakumar, for the Respondent

Judgement

M.R. Hariharan Nair

1. The revision petitioner is the appellant in C.M.A. No. 26/99 of the Additional District Court, North Paravur. The challenge is of the dismissal of the appeal questioning the refusal of relief prayed for in I.A. No. 1090/99 in O.S. No. 179/99 of the Munsiff's Court, Perumbavoor. In other words, what is under challenge is the concurrent findings of the two courts below that the petitioner is not entitled to get an injunction against the respondents from interfering with their management of the Guardian Angel English Medium High School, Mannoor. The petitioner is the Administrator of the school appointed by its Manager, viz. the Metropolitan of the Jacobite Syrian Church, who is not a party to the suit. The school building is situated in the Church premises of the 1st respondent and it is not disputed that the building belongs to the Church. But the school is claimed to be owned by a Charitable Society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act of which the Metropolitan is the President for life. To help the Manager of the school in its administration, an Advisory Committee was formed consisting of a Secretary and a Treasurer besides other committee members. Some of the trustees of the Church were also members of the said committee; but the ownership of the school continued to be with the Metropolitan. Appointments to the posts in the

school and admissions of students were being done by the Administrator appointed by him.

2. On 19-4-1992 there was an offer by the Metropolitan that the management of the school might be transferred to the 1st respondent's Church in due course; but that did not materialise. The respondents are now trying to interfere with the management of the school. An Advisory Committee formed by the Metropolitan was dissolved by the defendants and they formed a new Advisory Committee including some parishioners of the Church. The new committee has withdrawn Rs. 62,000/- from the school account with Federal Bank and they have taken away school records by force.

3. The petition was filed at a time when fresh admissions to the classes were to be made and transfer certificates for old students had to be issued.

4. In the counter the respondents denied that the school is being managed by the petitioner. General Body Meeting of the Parish Church in whose building the school is run, held on 19-4-1992 and presided over by the Metropolitan, accepted the offer of the Metropolitan to surrender school management and a school committee was accordingly elected with the Metropolitan as the Manager and with the Parishioners as members of the committee. For the past seven years this committee has been managing the school with the active co-operation of the parents and well-wishers. In O.S. No. 221/96 filed by the henchmen of the plaintiff a status quo order was passed and it is the respondents herein who have custody of the school records. The school is being run meritoriously and there is no justification for the grant of any injunction.

5. Under Ext.A1 memorandum of association of the society the Metropolitan is the life President of the society. Under Ext.A4 it was the President of the society who was granted sanction to open the school. Ext.A5 minutes of the General Body Meeting held on 19-4-1992 reveals that the Metropolitan expressed his intention to change ownership of the school when an appropriate time arrived. There is nothing to show that he has accordingly transferred the ownership or management of the school to the respondents herein or to the previous church committee.

6. For the respondents it is pointed out that Ext. B1(a) income and expenditure statement of the society for the period from 1 -4-1996 till 31-3-1997 does not mention of any income or expenditure with regard to the administration of the school. This, when viewed in the background that there was no interruption in the running of the school, shows that there is merit in the respondents' contention that the school was not being run by the plaintiff during the said period.

7. The court below has perused Ext.B16 and found that a decision was taken in the General Body Meeting of the Church held on 9-4-1995 to buy two Mahindra Jeeps for the use of the school by raising loan by pledging property owned by the Church and to receive security deposit from teachers to be appointed. Ext.B16 is

the decision of the managing committee of the school to appoint the persons mentioned therein as teachers for the academic year 1995-96 and that a decision was also taken by the committee to arrange a Van through lease for transport of the students and also for appointment of a Driver therefor. Besides, various other decisions pertaining to the management of the school including for enhancement of the school fees, salary for teachers etc. were also taken. In the meeting of the managing committee held on 10-3-1996, it was decided to advertise vacancies of Headmaster and Teachers. The plaintiff could not produce any such evidence with regard to the management of the school during the period. Exts.B10, B11 and B13 show that during the year-1998-99 practically everything relating to the management of the school

8. O.P. No. 7452/99 was filed by the Manager of the school (Metropolitan) seeking police protection for running the school. It was found therein that the dispute between the parties was essentially one of civil nature and that it was up to the police to take appropriate action, if there was any law and order situation. The request for an order for providing police protection for running the school was turned down by this court with the said observation.

9. O.P. No. 11634/99 is yet another O.P. filed by the petitioner herein along with the Manager as also the Headmaster by name T.C. Thomas allegedly appointed by the plaintiff for running the school. The order passed therein also upheld maintenance of status quo and was not quite in favour of the plaintiff. A perusal of the impugned order shows that it was mainly the aforesaid reasons which prompted the court to deny injunction against the conduct of the school by the respondent.

10. During hearing the learned counsel for the revision petitioner brought to my notice the fact that the contents of Ext.P5 only show that the Metropolitan had agreed to handover management at an appropriate time and that there was no agreement therein that the possession and management of the school would be transferred immediately. In Ext.A6 order passed in C.R.P. No. 1995/96 it was found that the request for impleadment of the present defendants' representatives in the party array was found justified and it was directed that they would be impleaded as additional defendants in O.S. No. 221/96 which was a suit seeking injunction against the Metropolitan from transferring the ownership of the school to the Church. There was an injunction passed in the case against such transfer and in view of the impleadment as above the said order is binding on the present defendants.

11. O.S. No. 11/96 was a suit filed by the Treasurer of the committee by name George Jacob against the Vicar and Trustees of the Church for injunction against the constitution of new committees. In I.A. No. 819/96 filed therein an order was passed on 21-3-1996 for maintenance of status quo.

12. In view of the aforesaid order, a new committee can function only with the sanction of the Metropolitan. As against the said order the accounts of the school

in the Bank of India and in the Federal Bank were got transferred to the names of the Treasurer and Secretary of the school committee. In Ext.A7 order dated 10-3-1999 it was found that status quo order had been violated by the Treasurer and Secretary. C.M.A. No. 18/99 filed by the school committee against Ext.A7 order was disposed of along with C.M.A. No. 26/99 and the finding of the court below was upheld therein. In O.P. No, 11634/99 there was a direction to the Additional District Court, Paravur to dispose of C.M.A. No. 18/99 and C.M.A. No. 26/99 together. Though orders were pronounced by that court accordingly, there is some incongruity between the findings in the two cases in so far as in C.M.A. No. 18/99 the finding of the trial court that status quo order was violated by Poulose and Thomas John was upheld whereas in the order impugned herein that is in C.M.A. No. 26/99 the group represented by the said persons has been allowed to proceed with the school management. In Ext. AIO order in O.P. No. 7542/99 the conduct of S.S.L.C. Examination peacefully through police protection was allowed. Ext.A15 dated 13-4-1999 is yet another order granting police protection for conduct of the examination. Ext.A9 shows that the Metropolitan has appointed a new Headmaster on 23-5-1999.

13. The above documents show that it was in violation of court orders that the respondents assumed actual management of the school. Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others, is an authority for the proposition that no injunction can be issued in favour of a trespasser or a person who gained unlawful possession as against the true owner. The effect of the impugned order is that notwithstanding the finding that the defendants have assumed management in violation of the interim orders of this court obtained by the plaintiff, no injunction is allowed which would enable the plaintiff to re-assume management and run the school.

14. Here is a case where there is a school of high reputation being run in the premises of the defendants. It is stated that during the examination held in 1999 all the students who appeared for the finalexamination from this school have passed out.

15. Obviously there is scramble for possession now. The result of such scramble would be ineffective management of the school which will affect the hundreds of students studying in the school. If the injunction sought for by the plaintiff is granted, there will naturally be an attempt to recover possession from the defendants through force and that will not be advantageous to the future of the students or to the school itself. In these circumstances, I am of the view that this is a fit case where a Receiver can be appointed for the management of the school until the final disposal of the suit. The impugned order is hence set aside and the order passed in I.A. No. 1090/99 which is impugned in the C.M.A. is modified. Sri.C. Khalid who is a practicing Advocate of this court is appointed as Receiver. The school committee of the defendants may continue the management of the school; but under the said Receiver and subject to his directions and those issued by the trial court from time to time. Decision on all policy matters should be

taken only with the leave of the trial court. It will be open to the Receiver also to seek directions from that court on relevant matters wherever necessary. The plaintiff is called upon to deposit before the trial court a sum of Rs. 10,000/- towards the initial expenses. It will be open to the trial court to pass appropriate orders fixing the remuneration of the Receiver, taking into account the workload involved.

Revision is disposed of as above.